RECORD, CASE NO. 14305.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM No., 275.

ANTHONY F. SEEBERGER, COLLECTOR OF CUSTOMS FOR THE PORT AND DISTRICT OF CHICAGO, PLAINTIFF IN ERROR,

vs.

WILLIAM BEST, W. H. RUSSELL, AND LORIN PALMER, COPARTNERS AS BEST, RUSSELLL & CO.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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damage of said plaintiffs in the sum of three hundred dollars and direct the same to the marshal of said district to execute and make it returnable to the March term of said court, A. D. 1889.

SHUMAN & DEFREES,
Plaintiffs' Attorneys.

To WM. H. BRADLEY, Esq., *Clerk.*
CHICAGO, *Jany 28th*, 1889.

(Endorsed :) Filed Jany 28, 1889. Wm. H. Bradley, clerk.

3 *Bond for costs.*

UNITED STATES OF AMERICA,
Northern district of Illinois, ss:

Circuit court, March term, A. D. 1889.

WILLIAM BEST ET AL.
vs.
ANTHONY F. SEEBERGER, COLLECTOR, &C. } In law.

We enter ourselves security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court; and in default of payment by the plaintiffs of any costs ordered or adjudged to be paid by them, we hereby agree and stipulate that execution may issue against our property for any costs taxed against plaintiffs.

Dated this 28th day of January, A. D. 1889.

SHUMAN & DEFREES.

(Endorsed :) Filed Jan'y 28, A. D. 1889. Wm. H. Bradley, clerk.

4 On the same day, to wit, on the twenty-eighth day of January, 1889, there issued out of said clerk's office a writ of summons in said entitled cause, which said writ, together with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

Summons.

CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
Northern district of Illinois, ss:

The United States of America, to the marshal of the northern district of Illinois, greeting:

We command you to summon Anthony F. Seeberger, collector of customs for the port and district of Chicago, if found in your district, to be and appear before our judges of our circuit court of the United States for the northern district of Illinois, on the first day of the next term thereof, to be holden at Chicago, in the district aforesaid, on the first Monday of March next, to answer unto William Best, W. H. Russell, and Lorin

Palmer, copartners as Best, Russell & Co., of a plea of trespass on the case upon promises to their damage, as is alleged, of three hundred dollars, and have you then and there this writ.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 28th day of January, in the year of our Lord one thousand eight hun-
5 dred and eighty-nine, and of our Independence the 113th year.

[SEAL.] WM. H. BRADLEY,
Clerk.

Marshal's return.

I have served the within writ by reading the same to and within the presence and hearing of Anthony F. Seeberger, collector of customs for the port and district of Chicago therein named, on the 28th day of January, 1889.

F. H. MARSH,
U. S. Marshal.
By GEO. N. JONES,
Deputy.

(Endorsed:) Filed Jan'y 28, A. D. 1889. Wm. H. Bradley, clerk.

6 Afterward, to wit, on the fifteenth day of February, 1889, came the plaintiffs, by their attorneys, and filed in said clerk's office their declaration in said entitled cause; which said declaration is in the words and figures following, to wit:

Declaration.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss.

In the United States circuit court for the northern district of Illinois, to the March term, 1889.

William Best, W. H. Russell, and Lorin Palmer, copartners, doing business under the firm name and style of Best, Russell & Co., plaintiffs in this suit (which is a suit arising under the revenue laws of the United States, and is brought to recover duties claimed by the plaintiffs to have been illegally exacted of them, and by them paid under protest), by Shuman & Defrees, their attorneys, complain of Anthony F. Seeberger, collector of customs for the port and district of Chicago, defendant herein, who was summoned, etc., of a plea of trespass on the case on premises.

For that whereas the said plaintiff heretofore, to wit, on the first day of January, in the year of our Lord one thousand eight hundred and eighty-nine, at, to wit, the northern district of Illinois, made payment to the said defendant, collector as aforesaid, of a certain large
7 sum of money, to wit, the sum of three hundred dollars and —— cents, lawful money of the United States as duties, under protest, and in order to obtain possession of certain tin and paper boxes containing safety matches, used as coverings, merchandise imported into the United

States for them, the said plaintiffs, entered for consumption at the custom-house at the port of Chicago, in the district aforesaid, under the charge and control of the said defendant as such collector; and the said plaintiffs aver that said sum of money above specified so paid to the said defendant as aforesaid, as duties as aforesaid, was in excess of the amount of duties authorized by the laws of the United States to be levied, collected, and paid upon the merchandise aforesaid, and was by the said defendant collector illegally demanded and exacted of and from the said plaintiffs. And the said plaintiffs aver that within ten days after the ascertainment and liquidation of the duties upon the merchandise aforesaid by the proper officers of the customs, they, the said plaintiffs, being dissatisfied with the decision of the said collector, gave notice in writing to the said defendant, as collector, setting forth therein distinctly and specifically the ground of their, the said plaintiff's, objections thereto, and that within thirty days after the date of the said ascertainment and liquidation as aforesaid the plaintiffs appealed to the Secretary of the Treasury of the
8 United States. And the said plaintiffs aver that the decision of the said Secretary of the Treasury has been had on said appeal, and that this suit has been brought within ninety days after the decision of the said Secretary of the Treasury on such appeal.

By means whereof and by force of the statute of the United States in such case made and provided, the said defendant became liable to pay to the said plaintiffs the sum of three hundred dollars and —— cents, lawful money as aforesaid, so illegally demanded of, and under protest paid by, the said plaintiffs as aforesaid, and being so liable, the said defendant afterwards, to wit, on the day and year and at the district aforesaid, in consideration thereof, undertook and then and there faithfully promised the said plaintiffs well and truly to pay to the said plaintiffs the said sum of money when he, the said defendant, should be thereunto afterwards requested.

And whereas also, the said defendant afterwards, to wit, on the same day and year, and at the place last aforesaid, became and was indebted to the said plaintiffs in the further sum of three hundred dollars, like lawful money as aforesaid, for money by the said defendant before that time had and received to and for the use of the said plaintiffs; and being so indebted the said defendant afterwards, to wit, on the day and year
9 and at the district last aforesaid, in consideration thereof, undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money last mentioned whenever the said defendant should be thereunto afterwards requested:

Nevertheless the said defendant (although often requested, etc.) has not paid the said several sums of money above specified, or any or either of them, or any part thereof, to the said plaintiffs; but to pay the same, or any part thereof, to the said plaintiffs, the said defendant hath hitherto wholly neglected and refused, and still does so neglect and refuse, to the damage of the said plaintiffs in the sum of three hundred dollars, and therefore the said plaintiffs bring their suit, &c.

SHUMAN & DEFREES,
Plaintiffs' Attorneys.

(Endorsed:) Filed Feb'y 15, 1889. Wm. H. Bradley, clerk.

10 Afterward, to wit, on the sixteenth day of February, 1889, came the defendant, by his attorney, and filed in said clerk's office his appearance in said entitled cause; which said appearance is in the words and figures following, to wit:

Appearance.

United States circuit court northern district of Illinois, N. Div.

BEST ET AL.
vs.
SEEBERGER, COLLECTOR, &C. } No. 21181–638. Assumpsit.

The appearance of Anthony F. Seeberger, collector, defendant in this cause, is hereby entered by his attorney.

WM. G. EWING,
United States Attorney.

(Endorsed:) Filed Feb'y 16, 1889. Wm. H. Bradley, clerk.

11 Afterward, to wit, on the first day of April, 1889, came the defendant, by his attorney, and filed in said clerk's office his plea in said entitled cause; which said plea is in the words and figures following, to wit:

Plea.

In the circuit court of the United States of America for the northern district of Illinois, March term, 1889.

ANTHONY F. SEEBERGER, COLLECTOR, &C.,
ats.
WILLIAM BEST ET AL. } 638. No. 21181.

And the said Anthony F. Seeberger, collector, &c., defendant, by William G. Ewing, United States attorney for this district, his attorney, comes and defends, etc., when, etc., and says that he did not undertake or promise in manner and form as the said plaintiff has above thereof complained against him, and of this the said defendant puts himself upon the country, etc.

WILLIAM G. EWING,
U. S. Attorney for Defendant.

(Endorsed:) Filed April 1, 1889. William H. Bradley, clerk.

12 Afterward, to wit: On the third day of April, in the adjourned March term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

WILLIAM BEST ET AL.
vs.
ANTHONY F. SEEBERGER, COLLECTOR, &C. } Assumpsit.

Now come the parties, by their attorneys, and upon issue joined herein thereupon comes a jury of good and lawful men, to wit: E. M. Donohue,

John A. Rolfe, Julius Jonas, S. A. Albertson, Julius Ludwig, Samuel Davidson, Thomas Hurlstone, I. P. Nudd, George McKinney, S. J. Block, Matt Kilborg, and W. M. Brown, who were all duly elected, tried, and sworn well and truly to try said issue and after hearing a part of the evidence, it is ordered that the further trial of this cause be postponed until to-morrow morning.

13 Afterward, to wit: On the fourth day of April, in the adjourned March term of said court, 1889, in the record of the proceedings thereof in said entitled cause before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

WILLIAM BEST ET AL.
vs.
ANTHONY F. SEEBERGER, COLLECTOR, &C. } Assumpsit.

Now come again the parties, by their attorneys, and now come also the jury in this behalf empaneled and sworn, and after hearing the concluding evidence and receiving the instructions of the court the jury returned the following verdict, to wit: We, the jury find the issue for the plaintiffs, and assess their damages at seventy-six dollars and seventy cents.

14 Afterward, to wit: On the sixth day of April, in adjourned March term of said court, 1889, in the record of the proceedings thereof in said entitled cause before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

WILLIAM BEST ET AL.
vs.
ANTHONY F. SEEBERGER, COLLECTOR, &C. } Assumpsit.

Now come the parties by their attorneys, and the defendant by his attorney moves the court for a new trial and in arrest of judgment, and after hearing the arguments of the counsel upon said motions the court overrules the same.

Afterward, to wit: On the fourteenth day of June, in the adjourned May term of said court, 1889, in the record of the proceedings thereof in said entitled cause before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Judgment.

WILLIAM BEST, W. H. RUSSELL, AND LORIN PALMER,
vs.
ANTHONY F. SEEBERGER, COLLECTOR, &C. } Assumpsit.

15 On motion of the plaintiffs' attorney for judgment herein, it is thereupon considered and adjudged by the court that said plaintiffs do have and recover of said defendant the said sum of seventy-six dollars

and seventy cents, their damages, with interest thereon from time of payment, together with their costs in this behalf, amounting to thirty-two dollars and sixty-six cents.

And the court finds that there was probable cause for the acts done herein by said defendant and that execution do not issue herein.

16 On the hearing of said cause the following exceptions were taken and were allowed by the court and made of record, which said exceptions are in the words and figures following, to wit:

Bill of exceptions.

In the circuit court of the United States in and for the northern district of Illinois, northern division.

WILLIAM BEST ET AL.
vs.
ANTHONY SEEBERGER, COLLECTOR, ETC. } Gen. No. 21181. Assumpsit.

Be it remembered that upon the trial of this cause the plaintiff introduced testimony tending to show that the goods in question consisted of small rectangular boxes containing waxed matches; that the boxes varied in size from an inch long by three-quarters of an inch wide by a quarter of an inch deep to two and a half inches long by half an inch thick and an inch and a half wide; that they were made of tin, wood, sometimes covered with paper, sometimes not, brass, and a few of pasteboard; that they were all neatly finished and contained, when they were brought into this country, small wax matches; that the small sized boxes were just large enough to contain a certain number of matches, packed

17 longitudinally in the boxes; that the larger size were large enough to contain a certain number of matches laid crosswise in said boxes; that the tops of said boxes were fitted with springs and were of a convenient size to be carried in the pocket; that many of the boxes contained advertising matter, printed or stamped on the outside, in addition to the matches which were in them; that the boxes, when emptied of matches which came in them, were capable of being used and were in fact used for other purposes than mere transportation of the goods therein contained, and that they were sometimes used as pocket match boxes by being refilled with ordinary wooden matches.

No proof was offered on the part of the defendant contradicting the testimony above set out. And thereupon on motion of the plaintiff the court instructed the jury that the articles in question were fancy boxes within the meaning of Schedule M, clause 7, paragraph 390, tariff act of March 3, 1883. To which action of the court defendant, by his counsel, then and there excepted and requested the court to charge that the goods were dutiable at the rate of 100 per cent ad valorem as unnecessary covering under section 7 of said act, which the court refused to do. To which action of the court defendant, by its counsel, then and there duly excepted and tenders this his bill of exceptions, which he prays may be signed, sealed, enrolled, and made part of the record, and the same is

18 done accordingly.

H. W. BLODGETT. [SEAL.]

[Endorsed:] Filed June 14, 1880. Wm. H. Bradley, clerk.

19 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct transcript of the record of all the proceedings had in said court in the cause wherein William Best, W. H. Russell, and Lorin Palmer, copartners as Best, Russell & Co., are plaintiffs, and Anthony F. Seeberger, collector of customs for the port and district of Chicago, is defendant, as the same appears from the records and files of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, northern division, this thirteenth day of February, 1890.

[SEAL.] WM. H. BRADLEY,
Clerk.

20 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is before you in said circuit court between William Best, W. H. Russell, and Lorin Palmer, copartners as Best, Russell & Co., and Anthony F. Seeberger, collector of customs for the port and district of Chicago, in an action of assumpsit a manifest error hath happened, to the great damage of the said Anthony F. Seeberger, collector of customs for the port and district of Chicago, as by his complaint appears, and it being fit that the error, if any there has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. 1890, in the Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 3rd day of February, in the year of our Lord one thousand eight hundred and ninety, and of the Independence of the United States the 114th year.

[SEAL.] WM. H. BRADLEY,
Clerk of the Circuit Court of the United States for the Northern District of Illinois.

(Indorsed:) Supreme Court of the United States. Anthony F. Seeberger, collector of customs for the port and district of Chicago, plaintiff in error, vs. William Best, W. H. Russell, and Lorin Palmer, copartners as Best, Russell & Co., defendants in error. Writ of error. Copy deposited for the defendants in error in the clerk's office, U. S. northern district of Illinois.

21 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

To WILLIAM BEST, W. H. RUSSELL, and LORIN PALMER, copartners as Best, Russell and Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October, A. D. 1890, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein William Best, W. H. Russell, and Lorin Palmer are plaintiffs, and Anthony F. Seeberger, collector of customs for the port and district of Chicago, is defendant, to show cause, if any there be, why the error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Henry W. Blodgett, judge, this twelfth day of February, in the year of our Lord one thousand eight hundred and ninety.

H. W. BLODGETT,
Judge.

Service accepted.

PERCY L. SHUMAN,
Atty. for Defts. in Error.

2/12/90.

(Indorsed:) 21181. Supreme Court of the United States. William Best et al. vs. Anthony F. Seeberger, coll'r. Citation to October term, A. D. 1890.

(Indorsed on cover:) No. 275. Anthony F. Seeberger, collector of customs for the port and district of Chicago, plaintiff in error, vs. William Best, W. H. Russell, and Lorin Palmer, copartners as Best, Russell & Co. N. Illinois C. C. U. S. Filed October 17, 1890.